IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16644 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RUPEN KISHORBHAI RAO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16644 of 2003

MR HR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and

setting aside an order dated 18.10.2003 passed by respondent no.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the ground that one offence was registered against the petitioner on 17.10.2003 and two unnamed witnesses had given statements against the petitioner stating that the petitioner was guilty of violating 'public order'. The petitioner was arrested on the date of the order itself and he is under detention since then. The petitioner has challenged the aforesaid order of the detention on various grounds. It has been contended that the petitioner has not committed any violation of public order and that the order has been passed against the petitioner without proper application of mind. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be se aside and the petitioner may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. P B Sheth, learned AGP has appeared. She has also submitted affidavit of the detaining officer which is taken on record. At the stage of final hearing, learned Advocate for the petitioner has argued that though one offence has been registered against the petitioner and though two unnamed persons appear to have given some statements against the petitioner, the petitioner is not shown to be a person who could be treated to be a dangerous person or a person who has committed violation of public order and, therefore, the detaining authority ought not to have passed the order in question directing his detention in terms of the said order.

3. On going through the detention order dated 18.10.2003, it is found that one offence has been registered against the petitioner on 17.10.2003 for possessing 510 bottles of foreign liquor. The said offence being Prohibition South Division C.R. No.1525/2003, is punishable under section 65,66 and 81 of the Bombay Prohibition Act.

4. On this aspect of the case, we may simply refer to a decision dated 26.2.2004 of this Court in Special C.A. No.16542/2003 (Coram: Hon'ble Mr Justice N G Nandi). Considering the above decision, it is very clear that even if the allegations made against the petitioner are taken to be true as they stand, the alleged activities of the petitioner may amount to a threat to law and order situation and it would not amount to a

threat to public order. The order of detention can be passed only if there is a threat to public order and such an order cannot be passed if it amounts to a threat to law and order situation. Since the said requirement is not there in this case, the order of the detention passed against the petitioner cannot be sustained in the eye of law. In other words, the impugned detention order is required to be quashed and set aside.

5. For the foregoing reasons, this petition is allowed. The impugned order dated 18.10.2003 passed by respondent No.2 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp